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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,851

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Alfons Bockmann

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/09/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/516,851	Applicant(s) BOCKMANN ET AL.	
	Examiner BRENT T. OHERN	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 April 2008 has been entered.

Claims

2. Claims 1-2, 5 and 7 are pending.

WITHDRAWN OBJECTIONS

3. The objections of record in the Office Action mailed 17 November 2007, pp. 2-3, paras. 5-7, have been withdrawn due to Applicant's amendments in the Paper filed 18 April 2008.

WITHDRAWN REJECTIONS

4. The 35 U.S.C. 112, second paragraph, rejections of claims 1-2 and 4-7 of record in the Office Action mailed 17 December 2008, p. 3, paras. 8-10, have been withdrawn due to Applicant's amendments in the Paper filed 18 April 2008.

5. The 35 U.S.C. 102(b) rejections of claims 1-2 and 4-7 as being anticipated by Barsotti (WO 00/49072) of record in the Office Action mailed 17 December 2008, page 4, paragraph 11, have been withdrawn due to Applicant's amendments in the Paper filed 18 April 2008.

6. The 35 U.S.C. 102(b) rejections of claims 1-2, 4-5 and 7 as being anticipated by Touhsaent et al. (US 5,827,615) of record in the Office Action mailed 17 December 2008, page 5, paragraph 12, have been withdrawn due to Applicant's amendments in the Paper filed 18 April 2008.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

7. Claims 1-2, 5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The phrase "material of the coating being largely compatible to material and possibly to the contents of the container with respect to properties, selected from mechanical strength, thermal expansion, and chemical resistance" in claim 1, lines 7-12 is vague and indefinite as it is unclear what is the difference between "largely compatible" and not largely compatible, what is the "material" referring to and whether "possibly" is an optional or required limitation.

9. The phrase "material of the coating" in claim 1, line 7 is vague and indefinite since it is unclear whether it refers to all of the coating or part of the coating.

10. Claim 1 recites the limitation "the coating material" in line 11. There is **insufficient antecedent basis** for this limitation in the claim.

11. Regarding claim 7, line 4, the phrase "**for example**" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Clarification and/or correction required.

Examiner's Note

12. The claims have some clarity issues as noted above that appear to be a result of the translation into English.

Claim Rejections - 35 USC § 102/103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1-2, 5 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Carlblom (US 5,637,365).

Carlblom ('365) teaches a plastic container of polyolefins (*See col. 2, ll. 22-25.*), a coating that hinders the diffusion of oxygen, wherein the exterior and/or interior surfaces of the container are coated with the coating with oxygen barrier properties, and material of the coating being largely compatible to material and possibly to the contents of the container with respect to properties of the coating selected from mechanical strength, thermal expansion, and chemical resistance, wherein the coating material is based on modern epoxy resins or amine adducts, and wherein the coating has a thickness of 0.003 to 0.03 μm (*See col. 1, ll. 9-14, col. 2, ll. 21-33, col. 3, ll. 7-13, col. 4, ll. 50-60, col. 10, ll. 50-67 and col. 12, ll. 14-31 where the coating is less than 0.5 mil, which equals 12.7 μm includes the above range that is applied to the treated surface by one of various techniques and is heat cured.*).

In the alternative, a person having ordinary skill in the art would obviously appreciate or provide that the above thickness includes the above range. See col.4, ll. 50-60 where Carlblom ('365) teaches that the coating is made just thick enough so as to provide sufficient increase in shelf life at the lowest cost, but not too thick and wasting money. Thus, a rejection under 35 USC 102/103 is proper (*See MPEP 2112.*).

The phrase “for the packaging and long-term storage of food products the container comprising to reduce the amount of oxygen penetrating the plastic container in a closed portion thereof” in claim 1, lines 2-9 is deemed to be a statement with regard to the **intended use** and is not further limiting in so far as the structure is concerned (*see MPEP 2111.02*). Carlblom ('365) is clearly cable of being used as such.

The phrases “wherein the coating is applied by spray coating and/or dip coating only the outer surface or the entire freely accessible surface of the plastic container in one operation” in claim 2, lines 2-4 and “wherein, after it has been applied to the container surface, the coating is subjected to an aftertreatment that consists, for example, of heating or UV irradiation for the purpose of drying it or curing it” in claim 5, lines 2-5 and “wherein the container surface to be coated is pretreated, by flame treating, before it is coated and is then, for example, fat-free and/or dust-free and/or roughened” in claim 7, lines 2-4 are **process limitations** in product claims and hence not given any patentable weight since patentability of a product does not depend on its method of production (*see MPEP § 2173.05(p)*).

The phrases “possibly to the contents” in claim 1, line 8 and “before it is coated and is then, for example, fat-free and/or dust-free and/or roughened” in claim 7, lines 3-

4 are **optional**, thus not limiting. Furthermore, Carlblom ('365) clearly teaches and/or is cable of such conditions.

ANSWERS TO APPLICANT'S ARGUMENTS

14. In response to Applicant's arguments (*pp. 5-7 of Applicant's Paper filed 18 April 2008*) that the amended claims are not taught by Barsotti ('072) and Touhsaent ('615), it is noted that said references are no longer cited, thus, Applicant's arguments are moot.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT T. OHERN whose telephone number is (571)272-0496. The examiner can normally be reached on Monday, Tuesday and Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/
Examiner, Art Unit 1794
May 2, 2008

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794